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Texas Senate
Education Committee
Austin, Texas 78711

Re: Testimony in favor of H.B. 3678 (School Children's Religious Liberties Bill)

To Members of the Senate Education Committee:

**JOE REYNOLDS TESTIMONY
SENATE EDUCATION COMMITTEE HEARING ON H.B. 3678**

My name is Joe H. Reynolds. I am testifying in favor of this Bill. In the event I am unable to personally attend the Senate hearing on H.R. 3678, I designate Kelly Coghlan as my agent to speak on my behalf and to read my testimony into the record. I have been asked to give some of my background before I testify. I am a practicing Houston attorney, formerly with Bracewell, Reynolds & Patterson, and founder of Reynolds, Allen & Cook. I am a member of the American College of Trial Lawyers, and former Assistant Attorney General of Texas. I was named one of the 5 best lawyers over 50 years by the Texas State Bar. I was on the Board of Regents of Texas A&M for 16 years, appointed by three different Governors, and Founder and Chairman of the Board of Visitors of the Thurgood Marshall Law School. I have practiced law for more than 50 years.

1. I have been the attorney and legal advisor for many of the major school districts in Texas, including, without limitation, the following:
 - a. Aldine I.S.D.
 - b. Alief I.S.D.
 - c. Alvin I.S.D.
 - d. Anahuac I.S.D.
 - e. A&M Consolidated I.S.D.
 - f. Atlanta I.S.D.
 - g. Austin I.S.D.
 - h. Baytown I.S.D.
 - i. Bryan I.S.D.

- j. Cleveland I.S.D.
- k. Cold Springs I.S.D.
- l. Conroe I.S.D.
- m. Crosby I.S.D.
- n. Cy-Fair I.S.D.
- o. Dickinson I.S.D.
- p. Fort Bend I.S.D.
- q. Friendswood I.S.D.
- r. Georgetown I.S.D.
- s. Hearne I.S.D.
- t. Henderson I.S.D.
- u. Houston I.S.D.
- v. Liberty I.S.D.
- w. Lubbock I.S.D.
- x. Madisonville I.S.D.
- y. Montgomery I.S.D.
- z. Nacogdoches I.S.D.
- aa. New Caney I.S.D.
- bb. North Forest I.S.D.
- cc. Spring Branch I.S.D.
- dd. Sulpher Springs I.S.D.
- ee. Waller I.S.D.
- ff. Warren I.S.D.
- gg. Wichita Falls I.S.D.
- hh. as well as school districts in Florida and Georgia, and others.

2. I have been the attorney and legally advised school districts in the constitutional area of religious expression in public schools for most of my career.
3. I have been told that no other attorney has represented more Texas school districts than I have over my career. I have spent my life representing school districts.
4. Today, school districts need the Legislature to take a leadership role in codifying current case law into an Act to clearly lay out parameters for school districts to follow in dealing with matters of religious expression by students in public schools.
5. Some school districts in Texas appear to be operating under the assumption that public schools are anti-religion zones. Some schools feel that it is their constitutional duty to cleanse public schools of all religious expression. Over the years, I have seen the pendulum swing way too far in that wrong direction.

6. With schools being threatened by various organizations that are against any religious expression, I have increasingly observed that schools are erring on the side of quashing students' expressions of religious viewpoints.
7. But the First Amendment does not require school officials to become prayer police and to treat religious students like second class citizens or enemies of the state.
8. Voluntary faith-based student speech is just as constitutionally protected as voluntary secular-based student speech on similar permissible subjects:
 - a. In *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995), the Supreme Court held: "Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."
 - b. In *Good News Club v. Milford Central School*, 533 U.S. at 111-12 and 107 n. 2 (2001), the Supreme Court held: "[S]peech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint." And that, excluding a "religious perspective constitutes unconstitutional viewpoint discrimination."
 - c. In *Bd. of Education v. Mergens*, 496 U.S. 226, 250 (1990), the Supreme Court held: "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." And also said, "The proposition that public schools do not endorse everything they fail to censor is not complicated." *Id.*
 - d. In *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969), the Supreme Court held: "It can hardly be argued that...students...shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
 - e. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000), the Supreme Court held: "[T]he Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer," but "nothing in the Constitution...prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday."

- f. In *Lee v. Weisman*, 505 U.S. at 589 (1992), the Supreme Court said, “[T]he First Amendment does not allow the government to stifle prayers...neither does it permit the government to undertake the task for itself. “Religious expression[s] are too precious to be either proscribed or prescribed by the State.”
 - g. In *Zelman v. Simmons-Harris*, 536 U.S. 639, 653-55 (2002), the Supreme Court held: “We have never found a program of true private choice to offend the Establishment Clause. We believe that the program challenged here is a program of true private choice...neutral in all respects toward religion.... [N]o reasonable observer would think a neutral program of private choice...carries with it the imprimatur of government endorsement.”
 - h. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 304-05 n.15, 316 n.23, 321, the Supreme Court indicated in a series of footnotes that if students are speaking in their individual capacities, even before a school organized audience, then government cannot discriminate against them based on the religious content of their speech on an otherwise permissible subject. As examples, the Supreme Court pointed to students whose selection is based on neutral criteria such as the typically elected “student body president, or even a newly elected prom king or queen” as speakers who could use public speaking opportunities to express a religious viewpoint without violating the Establishment Clause.
 - i. In *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990), the Supreme Court held: “The proposition that public schools do not endorse everything they fail to censor is not complicated.”
9. H.R. 3678 does not require or suggest that students should express religious viewpoints, it just protects the students if they do. This Bill puts school districts in a neutral posture and shows them how to maintain that neutral posture.
 10. This Bill eliminates the confusion leading to unnecessary lawsuits by codifying the many constitutional ways students may express their faith at school and at school-sponsored events and outlining what activities will land a school in constitutional hot water.
 11. This Bill shows schools how to be neutral in these sticky matters and provides them with an optional Model Policy which can be adopted in every school district in Texas.

12. I have carefully analyzed H.B. 3678. The Bill appears to be extremely well researched and reasoned. In my opinion the codification of the law in the Bill and model policy faithfully follow current law.
13. It is also my legal opinion that the Bill is constitutional, as written, and that as long as it is not amended from the form being introduced by Senator Tommy Williams in the Senate (as drafted by Houston attorney Kelly Coghlan of Coghlan & Associates and his team of constitutional legal experts from across the country), this Bill will withstand any lawsuits regarding constitutionality. Because constitutional law is so complex regarding the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment, I would highly advise against adding amendments to this Bill beyond what has been drafted by those constitutional experts.
14. An example of the unintended consequences of adding amendments to this Bill can be seen in the one amendment proposed in the House regarding viewpoints on “sex, race, age, sexual preferences, or differences in religious beliefs.” This amendment, while no doubt well intentioned, adds religious viewpoint discrimination into a Bill that is all about banning religious viewpoint discrimination. The amendment would censor every student’s religious viewpoint that disagreed, for instance, with same-sex marriage, or with radical Islam’s doctrine of Jihad, or with the Catholic doctrine allowing men only to become priests, or with the Episcopalian doctrine of ordination of homosexual priests, or with women serving in combat in the military, or with the “sexual preference” of pedophiles (notwithstanding their practices are illegal), or with the “sexual preference” of bestiality (notwithstanding their practices are illegal), and on and on. Also, expressions borrowed from the scriptures or doctrines of many religions would be censored as impermissible viewpoints that could never be expressed or defended.
15. In *Good News Club v. Milford* this type of religious viewpoint discrimination was held unconstitutional. This amendment would have the government censoring every student’s religious viewpoint that differed from the government’s preferred viewpoint on subjects that the school was permitting students to otherwise discuss. If this provision were to become a part of this Bill, it is my legal opinion that the provision would be unconstitutional and put the entire Bill into constitutional jeopardy.
16. As an attorney who has devoted much of my life to helping and representing school districts, I whole heartedly recommend passage of this Bill in the form being introduced by Senator Tommy Williams in the Senate and the adoption of the model policy by every school district in Texas. This will give our Texas school districts the

much needed guidance in this sticky area of the law that they have so greatly needed and desired.

17. It is my opinion that this is the best piece of legislation for school districts that has been introduced in the past 50 years.

Very truly yours,


Joe H. Reynolds